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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,691	02/19/2004	Michael Travis Gilbert	003797.00766	2033

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BANNER & WITCOFF, LTD.  
ATTORNEYS FOR CLIENT NOS. 003797 & 013797  
1100 13th STREET, N.W.  
SUITE 1200  
WASHINGTON, DC 20005-4051

EXAMINER
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FREJD, RUSSELL WARREN

ART UNIT	PAPER NUMBER
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2128

MAIL DATE	DELIVERY MODE
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06/01/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/780,691	GILBERT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Russell Frejd	2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

In re Application of: Gilbert et al.

***Examination of Application #10/780,691***

1. This communication is in response to the amendment received 2-March-2007. Claims 1-21 are pending in the application. This application is a CIP of 10/716,701, filed on 20-November-2003, now USP 7,077,749.

***Claim Rejections under 35 U.S.C. § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

2.1 Claims 1-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

2.2 In regard to claims 11-20, the invention claims (claim 11 preamble), *"A data structure stored on a **tangible** (newly amended) computer readable medium, said data structure identifying weather for simulation in a computer game"*.

2.2.1 This claimed subject matter lacks a practical application of a judicial exception (law of nature, abstract idea, naturally occurring article/phenomenon) since it fails to produce a useful, concrete and tangible result.

Specifically, the claimed subject matter does not produce a tangible result because the claimed subject matter fails to produce a result that is limited to having real world value rather than a result that may be interpreted to be abstract in nature as, for example, a thought, a computation, or manipulated data. More specifically, the claimed subject matter provides for:

(in claim 11) *"for each of a plurality of cells in a first two-dimensional grid, a first data field storing weather information corresponding to an area of predetermined size in a simulated*

In re Application of: Gilbert et al.

*geographical environment of the computer game, said each first data field comprising a plurality of sub-data fields, each sub-field defining a weather layer, wherein upon reading the data structure, weather based on the stored data is rendered on a display screen for presentation to a user."*

**2.2.2** This produced result of storing data remains in the abstract and, thus, fails to achieve the required status of having real world value, because a practical application with a tangible result is not generated for application in a real world environment. The Examiner respectfully notes that independent claims 1 and 21 each include limitations directed to *"graphically depicting weather in the computer game based on a current position of the user within the grid."* The Examiner contends that the *"first data field storing weather information corresponding to an area of predetermined size in a simulated geographical environment of the computer game"* in claim 11, is directed to the interim step [see step b) in claim 1] for applying the weather information read **from** (emphasis added) the data structure, and not to the tangibly practical result of graphically depicting weather *based on a current position of the user within the grid* as claimed in the other independent claims.

**2.2.3** Claims 1-21 are determined to not meet the criteria for a statutory process due to the inclusion of a description of a "communication media that embodies computer readable instructions, data structures, program modules or other data in a modulated data signal such as a carrier wave or other transport mechanism" [specification, p. 8, sec. 047]. In view of the guidelines for 101 subject matter, the instructions for graphically depicting weather defined in a pre-existing weather profile to a simulated geographical environment, as stated in claims 1-21, do not manipulate appropriate subject matter, and thus cannot constitute a statutory process

In re Application of: Gilbert et al.

under 35 U.S.C. § 101.

**2.3** The Examiner respectfully acknowledges Applicant's interview on March 2, 2007, but considers the current amendments to the claims, and the arguments presented in regard to the modulated data signal described in the specification, as unpersuasive, in view of the grounds of the rejections noted above. Applicant is invited to discuss the rejections with the Examiner at the earliest possible convenience.

### ***Claim Rejections under 35 U.S.C. § 102***

**3.** The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**3.1** Claims 1, 5, 6, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by the article cited on the 1449 received on 19-February-2004, entitled *War Games at the War College on Personal Computers*, Defense Electronics, April 1964.

**3.2** The article discloses:

**Claim 1:** a) a data structure comprising weather information for each of a plurality of cells (see "hex") in a multi-dimensional array [p. 72, sec. *Move, Fire, and Step*, par. 1 and 2];

applying the weather information to a grid [par. 2] within the simulated geographical environment [par. 3] based on a user's starting position of the user [par. 4 and 5, see especially "specified destination" and "critical locations"]; and

In re Application of: Gilbert et al.

graphically depicting weather [par. 2 and 6, see “brewing storms”] in the game based on a current position of the user within the grid [par. 4 and 5, see especially “specified destination” and “critical locations”].

**Claim 5:** a two-dimensional array [par. 2, see especially “map” and “terrain, weather and interior features”];

**Claim 6:** each cell corresponds to a geographical area of predetermined size [par. 2, see “map overlayed with a hexagonal grid, and characteristics...].

**Claim 11:** a plurality of cells in a two-dimensional grid [par. 2, see especially “map” and “terrain, weather and interior features”];

storing weather information corresponding to an area of predetermined size in a simulated geographical environment [par. 2, see “map overlayed with a hexagonal grid, and characteristics...];

a plurality of sub-data fields [p.72, sec. Multitasking Hardware, par. 2, see “data bases and facilities” and “different parameters”; and

rendering the stored weather data to a user [p. 71, col. 1, par. 2].

### ***Claim Objections***

4. Claims 2-4, 7-10 and 12-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In re Application of: Gilbert et al.

***Allowed Claims***

5. Claim 21 is deemed allowable over the prior art of record at this time, because the prior art does not specifically disclose the claimed method of graphically depicting a plurality of weather layers defined in a grid-based pre-existing weather profile that corresponds to a simulated geographical environment of predetermined size in a computer game, wherein the depicted weather is based upon the current location of a user within the grid,

***Response Guidelines***

6. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

**6.1 Any response to the Examiner in regard to this non-final action should be**

**directed to:** Russell Frejd, telephone number (571) 272-3779, Monday-Friday from 0530 to 1400 ET, or the examiner's supervisor, Kamini Shah, telephone number (571) 272-2279. Inquires of a general nature or relating to the status of this application should be directed to the TC2100 Group Receptionist (571) 272-2100.

**mailed to:** Commissioner of Patents and Trademarks  
P.O. Box 1450, Alexandria, VA 22313-1450

**or faxed to:** (571) 273-8300

Hand-delivered responses should be brought to the Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

**Date:** 23-May-2007

  
**RUSSELL FREJD  
PRIMARY EXAMINER**